

ADOT File No.: IGA/JPA 09-069-I
AG Contract No.: P0012009003608
Project No.:ARRA-GUA-0(200)A
Project: Street Light Replacement
Section: Avenida Del Yaqui, Calle
Guadalupe
TRACS No.: SS790 01C
Budget Source Item No.: ARRA

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF GUADALUPE

THIS AGREEMENT is entered into this date November 4th, 2009, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF GUADALUPE, acting by and through its MAYOR and TOWN COUNCIL (the "Town"). The State and the Town are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
3. Congress has authorized appropriations for the American Recovery and Reinvestment Act of 2009 (ARRA 2009) for the disbursement of funds and investment in certain projects, including but not limited to, roads, bridges, mass transit, energy efficient buildings, flood control, clean water and other infrastructure projects to save and create jobs for long term growth and stability
4. The work contemplated under this Agreement is the design review and construction/replacement of street lights, including mast arms and luminaires, on Avenida Del Yaqui and Calle Guadalupe within the Town, hereinafter referred to as the "Project". The State shall review design, advertise, bid and award the Project, while the Town will fund design efforts and maintain Project components, including providing electricity to power the Project components.
5. Such Project lies within the boundary of the Town and has been selected by the Town; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted by the State to the Federal Highway Administration (FHWA) for its approval.
6. The interest of the State in this project is the acquisition and distribution of ARRA/Recovery Act Funds for the use and benefit of the Town and to authorize such ARRA/Recovery Act Funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the Town.

No. 31219
Filed with the Secretary of State
Date Filed: 11/4/09
Ken Blum
Secretary of State
By: KBenz

7. The ARRA/Recovery Act Funds will be used for the construction of the project, including the construction engineering and administration cost (CE).

The current Project costs are as follows:

TRACS No. SS790 01C

ARRA/Recovery Act Funds (Maximum Available)	\$366,000.00
LOCAL Funds	<u>0.00</u>
*TOTAL Project Costs	\$366,000.00
*(Includes CE and project contingencies)	

The Parties acknowledge that the eventual actual cost may exceed the estimate, and in such case, the Town is responsible for any and all costs exceeding the estimate.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Review design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and submit comments to the Town as appropriate.

b. On behalf of the Town, perform work and prepare documents required by the FHWA to qualify certain projects for and to receive ARRA/Recovery Act Funds. Such work may consist of, but is not specifically limited to, the review and approval of the prepared environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

c. Upon approval by the FHWA, and with the aid and consent of the Town and FHWA, proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the Town. The State will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project; administer contract(s) for the Project and make all payments to the contractor(s); and be responsible for contractor claims for additional compensation caused by the Project delays attributable to the State.

d. Enter into a Project Agreement with FHWA on behalf of the Town covering the work encompassed in said construction contract and will request the maximum ARRA/Recovery Act Funds available, including construction engineering and administration costs. Should costs exceed the maximum ARRA/Recovery Act Funds available, it is understood and agreed that the Town will be responsible for any excess cost not covered by ARRA/Recovery Act Funds.

e. Not be obligated to maintain said Project, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement, or be responsible for the electrical power to said Project components.

2. The Town will:

a. Upon execution of this Agreement, designate the State as authorized agent for the Town.

b. Provide the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project to the State and incorporate comments from the State as appropriate.

c. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction.

d. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

e. Grant the State, without charge, cost or additional documents and agreements, permission to enter Town lands as required to conduct all construction and pre-construction activities related to the Project, including and without limitation, temporary construction easements, or temporary right-of-entry.

f. Be responsible for any and all costs attributable to any engineering change orders requested by the Town not covered by ARRA/Recovery Act Funds. The Town will also be responsible for contractor claims for additional compensation caused by Project delays attributable to the Town.

g. Provide for cost and, as an annual item in the Town's budget, proper maintenance of the Project, including all of the Project components. Continue to provide for electrical power for Project components at Town's expense.

h. Pay the State full compensation for all penalties, assessments or sanctions of any kind resulting from any failure to comply with any ARRA/Recovery Act requirement, including but not limited to, auditing, reporting and monitoring the project and its costs.

i. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

j. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.

k. Upon completion of the Project, agree to accept, maintain and assume full responsibility of said Project in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the Town. Further, this Agreement may be cancelled at any time prior to advertisement of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the Town terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of

the Town and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the Town, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of construction and construction engineering work under this Agreement is to be covered by the ARRA/Recovery Act Funds set aside for this Project, up to the maximum available. The Town acknowledges that the eventual actual costs may exceed the maximum available amount of ARRA/Recovery Act funds, or that certain costs may not be accepted by the federal government as eligible for ARRA/Recovery Act funds. Therefore, the Town agrees to furnish and provide the difference between actual costs and the ARRA/Recovery Act Funds received.

4. The State will follow reporting requirements in accordance with Section 1201 and Section 1512 of the American Recovery and Reinvestment Act of 2009.

5. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

7. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

10. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

11. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

Town of Guadalupe
Attn: Public Works Director
9241 S. Avenida del Yaqui
Guadalupe, Arizona 85283
(480) 730-5380
(480) 505-5368 Fax

12. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The Town warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the Town may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the Town or subcontractor is complying with the warranty under paragraph (a).

13. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

14. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

TOWN OF GUADALUPE

By: 
YOLANDA SOLAREZ
Mayor

STATE OF ARIZONA

Department of Transportation

By: 
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST:

By: 
ROSEMARY ARELLANO
Town Clerk

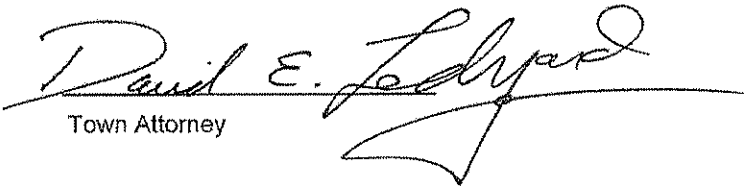
Initial Draft 7/1/09 ghc
PM changes 7/23/09
Draft 2 8/25/09 ghc
AG approved 9/10/09

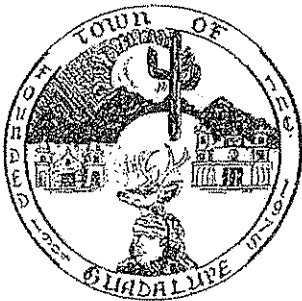
ATTORNEY APPROVAL FORM FOR THE TOWN OF GUADALUPE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN OF GUADALUPE, an Agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 29 day of Sept, 2009.


Town Attorney



Town of Guadalupe

9241 South Avenida Del Yaqui ♦ Guadalupe, Arizona ♦ 85283-2598 ♦ Phone: (480) 730-3080

RESOLUTION NO. 2009-11

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GUADALUPE APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, CONCERNING A STREET LIGHT IMPROVEMENT PROJECT FOR AVENIDA DEL YAQUI AND CALLE GUADALUPE - TRACS NUMBER: SS 79001C BUDGET SOURCE ARRA

RECITALS

- WHEREAS the State of Arizona has the authority pursuant to ARS 11-952 to enter into Intergovernmental Agreements with municipalities; and
- WHEREAS the Town of Guadalupe has the authority to enter into Intergovernmental Agreements with the State of Arizona pursuant to ARS 11-952 and ARS 9-276(A)(1); and
- WHEREAS the State of Arizona through its Department of Transportation has offered to assist the Town of Guadalupe with funding for a street light improvement project; and
- WHEREAS the Town of Guadalupe acting through its Town Council believes the aforesaid improvement project would be beneficial to the Town of Guadalupe and would protect the health, welfare and safety of its residents; and
- WHEREAS the mutual duties and responsibilities of the State of Arizona acting through its Department of Transportation and the Town of Guadalupe acting through its Town Council are set forth in the attached Intergovernmental Agreement;

NOW THEREFORE, BE IT HEREBY RESOLVED by the Mayor and Town Council of the Town of Guadalupe, Arizona;

1. The Intergovernmental Agreement with the State of Arizona is hereby approved; and
2. The Mayor of the Town of Guadalupe is hereby authorized to sign said Intergovernmental Agreement.

Passed and Adopted this 29 day of September 2009, by the Mayor and Town Council of the Town of Guadalupe.



MAYOR A. YOLANDA SOLAREZ

ATTESTED BY:


ROSEMARY ARELLANO
TOWN CLERK

APPROVED AS TO FORM:


DAVID E. LEDYARD
TOWN ATTORNEY

Certified Copy of Resolution 2009-11


MINUTES OF A SPECIAL MEETING
OF THE
TOWN OF GUADALUPE COUNCIL

A public meeting of the Town of Guadalupe Council was held on **TUESDAY, SEPTEMBER 29, 2009, AT 5:00 P.M.**, at Town of Guadalupe Town Hall, 9241 South Avenida del Yaqui, in the Council Chambers. The following members of council were present:

Vice Mayor Lupita Avelar
Councilmember Gloria Cota
Councilmember Rebecca Jimenez
Councilmember Laura Valencia
Councilmember Francisco Montiel arrived during action item 3 & 4.
Absent:
Mayor Yolanda Solarez
Councilmember Joe Sanchez

Staff:

Town Manager, Bill Hernandez
Town Clerk, Rose Mary Arellano

Town Engineers, Tri Core Engineers, Luis Aispuro and Frank Fletez.

The following matters were discussed, considered, and decided upon at the meeting:

- A. The meeting was CALLED TO ORDER by Vice Mayor Lupita Avelar.
- B. ROLL CALL was noted above.
- C. DISCUSSION AND POSSIBLE ACTION ITEMS:

- 1. Five Year Consolidated Plan (2010-2014) – Public Hearing.
(Continued from September 24, 2009).

Town Clerk, Rose Mary Arellano, stated the public hearing is held to allow for input from the community relative to housing and community development needs, priorities and strategies. Surveys were distributed at several council and community meetings and gatherings. Information was compiled and noted in the plan by Community Development Coordinator, Gino Turrubiarres. Ms. Arellano stated that approximately 20 surveys completed by residents were turned in right before the meeting.

Interim Fire Chief, Wayne Clement, requested that council consider public safety, fire services, be noted as a high priority need for the community. Councilmember Rebecca Jimenez concurred

and also requested the town identify under public safety both fire services and police protection. She asked the town remain focus on the housing needs and recreational programs for the youth.

There being no comments from the audience the public hearing was closed.

MOVED and SECONDED to close the public hearing.

MOTION CARRIED. 4 - 0

2. Resolution 2009-10 - A Resolution of the Mayor and Town Council of the Town of Guadalupe authorizing the Town to adopt and submit a Five Year Consolidated Plan (The Plan) with Maricopa County Community Development as required by the Department of Housing and Urban Development and for participation in the Development Block Grant (CDBG), HOME Investment Partnership Program (HOME) and the American Dream Downpayment Initiative (ADDI) and other HUD Programs.

No discussion.

MOVED by Vice Mayor Lupita Avelar to approve Resolution 2009-10.
SECONDED by Councilmember Laura Valencia.

MOTION CARRIED. 4 - 0

3. Resolution 2009 -11 - A Resolution of The Mayor and Council of the Town of Guadalupe approving an intergovernmental agreement with the State of Arizona –Department of Transportation concerning a street light improvement project for Avenida del Yaqui and Calle Guadalupe - TRACS Number: SS 79001C Budget Source ARRA.
4. Resolution 2009 – 12 – A Resolution of the Mayor and Town Council of Guadalupe Arizona approving an intergovernmental agreement with the State of Arizona Department of Transportation concerning a Paving and landscape project for Calle Guadalupe-TRACS number:SS 79301C Budget Source ARRA.

Town Clerk Rose Mary Arellano stated the town had applied for stimulus funds (AARA) available through Arizona Department of Transportation for *shove-ready* projects and were awarded \$366,000.00 for street lighting projects and \$268,022.00 for pavement and landscaping. The resolutions authorize the town to accept the funds awarded. It was noted that the concern raised by the town attorney regarding overrun costs had been address by Tri Core Engineering and did not cause change to the IGAs' language. The IGAs have also been reviewed and approved by the Attorney General's office.

Special Council Meeting
September 29, 2009
Page Three

(Councilmember Francisco Montiel arrived at this time – and chose not to participate in the voting.)

MOVED by Councilmember Laura Valencia to approve Resolution 2009-11 and 2009-22.
SECONDED by Vice Mayor Lupita Avelar.

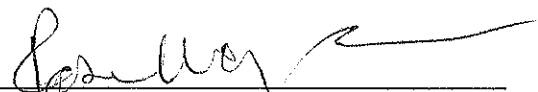
MOTION CARRIED 4 - 0

I. ADJOURNMENT.


MOVED and SECONDED to adjourn.

MEETING ADJOURNED.

CERTIFIED MINUTES of a meeting of the Mayor and Council of the Town of Guadalupe held September 24, 2009, at 7:00 p.m., 9241 South Avenida del Yaqui, Guadalupe, Arizona, in the Council Chambers. Quorum was declared.



Rose Mary Arellano, Town Clerk

<p>TERRY GODDARD Attorney General</p>	<p style="text-align: center;"> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012009003608 (**IGA/JPA 09-069-I**), an Agreement between public agencies, i.e., The State of Arizona and Town of Guadalupe, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 2, 2009

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:in:604191
Attachment